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To Promote the Efficient Administration of Justice

CONTENTS

Conciliation Law Adopted by North Dakota Legislature..... 165

Ohio Bar Association Asks Legislature for Self-governing Powers. 168

Florida Bar Association Approves Bill to Integrate Bar..... 173

San Diego Lawyers Seek Self-Discipline Through Bar Organization. 176

Commercial Arbitration Financed by Chicago Ass'n of Commerce 180

Small Claims Procedure Drafted by Massachusetts Justices..... 183

Detroit Solves Crime Problem Through Unified Court..... 189

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LIST OF PUBLICATIONS

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Bulletin IV-A—Second draft of so much of the Metropolitan Court Act as relates to the Selection and Retirement of Judges. This applies in large part to courts outside of large cities. Pp. 127.

Bulletin IV-B—Second draft of Metropolitan Court Act. Court organization for large cities. Pp. 94.

Bulletin VI—Organization of Courts, by Roscoe Pound; Methods of Selecting and Retiring Judges, by Albert M. Kales; Local Courts of Limited Jurisdiction (for rural counties), by Herbert Harley. Pp. 68.

Bulletin VII-A—Revised draft of a State-wide Judicature Act. A plan for a unified state court system extending from the Supreme Court to the Justice of the Peace. Pp. 198.

Bulletin X—The Selection, Tenure and Retirement of Judges, by James Parker Hall. Pp. 32,

Bulletin XII—A Report on Commercial Arbitration in England, by Samuel Rosenbaum. Of special interest to commercial lawyers and trade associations. Pp. 72.

Bulletin XIV—Rules of Civil Procedure Supplementary to the State-wide Judicature Act (Bulletin VII-A). Pp. 200.

Bulletin XV—Conciliation and Informal Procedure, with model acts. Pp. 32.

The Municipal Court of Chicago, historical and descriptive. Pp. 43.

Editorial

It should be gratifying to Mr. Reginald Herbert Smith, author of the Report on Justice and the Poor, that the first substantial reform directly attributable to his studies and recommendations should originate in his own state of Massachusetts. Mr. Smith showed clearly that the cases of the poor are the cases involving relatively small amounts. And by "poor" we understand not the indigent, but the great majority of all the people, those dependent solely upon their earnings, who find it hard to get through each year without debt, and so cannot endure the extravagance of litigation. And the unendurable burden in the little case is the lawyer's fee. It was made to appear plainly in this notable report that as long as lawyers are required for little cases there will necessarily be unfairness toward litigants or toward counsel. The little cases can never be a profitable source of income to lawyers. They are commonly a loss and an irritation. Speaking broadly the bar will benefit along with litigants when courts find a way to deal with small causes without counsel, and in that day lawyers can refuse to take these unprofitable cases.

Massachusetts is not the first state to attempt a legislative solution. Kansas was first with its specially created poor debtor's court limited to cases of $20 or less. But Massachusetts is the first state to adapt its regular court organization to the needs of the situation. The enabling act and the rules recently promulgated under it are published in this number, for they are likely to influence development in other states. We believe that readers will concur in the opinion that the essential point of these rules lies in getting away from the necessity for counsel. It will be successful just in proportion as it succeeds in this feature.

We do not suggest any doubt as to the success of the simplified procedure. It rests now wholly with the courts and success is to be presumed. It may be that eventually the limit of jurisdiction will be raised. That this limit is too low is the principal criticism against the act as it stands. The economies of informal procedure should not be limited to the very smallest claims. The reasons and the principles involved appear to point to a limit of at least one hundred dollars. Money is not worth as much as it used to be. In this aspect it will be interesting to compare the attack upon the problem of judicial efficiency in small claims about to be made by the state of North Dakota through its conciliation procedure, also set forth at length in this number. The western state has not feared to draw upon the best experience of the Old World. Its responsible *nisi prius* courts are given new organs for dealing with the delicate social relations involved in small civil litigation. If conciliation succeeds, and it has nowhere failed when given half a chance, it will obviate the need for the comparatively involved procedure just adopted in Massachusetts.

Congress has not yet passed the American Bar Association bill conferring upon the Supreme Court power to establish through rules of court a uniform procedure for the common law side of the United States trial courts, but we are assured that this legislation will come, and probably at an early date. Meanwhile, it is interesting to note the growth of sentiment in favor of the principle of developing procedural law through the rule-making power. Only a few years ago the idea was novel in most states, notwithstanding its long record of usefulness in other English-speaking countries. Now the principle is in active use in several states, and forms a considerable part of the program for advancement in many others.

New York is the latest state to embrace the rule-making principle. The procedural act of 1920 provides for rules committees and this is probably the feature of the act which will ultimately best justify the long struggle for the reform of New York's much deplored Code of Civil Procedure. A brief account of the new act is given in this number, by courtesy of the distinguished chairman of the New York State Bar Association's committee on this subject, Judge Alphonso T. Clearwater.

The new practice act does not attain the degree of compression which many had hoped for. In this respect it represents a compromise. But it will be agreed that it marks a very great advance by providing for expert and responsible development of the refinements of procedural law at the hands of the judges and the bar.

The rule-making principle may be based upon an inherent power of the courts, or it may be based upon the very common modern practice of delegating rule-making power in order to save the time of legislatures for matters involving legislative principles. The latter reasoning appears the more sound, in view of the fact that for more than half a century, in most of our states, the courts relinquished this traditional common law power. It appears more reasonable to hold that, when restored to them, it is not as an inherent power, but rather a mere instance of rule-making which legislatures in important states are more and more frequently resorting to. As to this policy we have learned a great deal from the French and English parliaments. In war time our own Congress had perforce to adopt this modern practice wholesale.

And yet one who dips into the year books of the various state bar associations finds that there are still lawyers so uninformed as to take the floor against the rule-making power of courts. A curious bundle of political superstitions occupies the place in their minds where there should be some knowledge of modern comparative political science. They appear to be obsessed with a bizarre conception of a tri-partite government which will go to the dogs if such a difficult function as developing procedural rules is not reserved to the ignorance and personal interest of legislators.

Still, the idea is gaining ground that legislatures have grievously shackled the courts by depriving them of responsibility for the administration of justice. We have never lived up to our idea of three distinct branches of government. When legislatures forego procedural tinkering and give needed attention to the text of general legislation there will be a better administration of justice and at the same time less reason for the courts to hold acts of legislature unconstitutional. This will be a realignment of political powers which will make for better government and preserve these two branches for their specific fields. It will be carrying out in practice that separation of powers toward which we have done service mainly with our lips.

North Dakota Legislature Enacts Law for Conciliation Procedure

The North Dakota legislature has passed a conciliation act which will put to the test our ideas concerning conciliation procedure as applicable to our judicial situation. If it works as well as we expect it to it will mean the beginning of a new dispensation in the administration of justice in small causes—the practical elimination of cost and delay, the ironing out of ugly feelings, or better, their prevention, and an attitude of respect for the courts which has been long needed throughout the country.

The measure received the approval of Governor Frazer on March 10. Within ninety days from that date the District Court judges of the state will have chosen conciliators who will represent that court in every county in the performance of the new function. Except in special classes of causes, and those involving more than $200, no court is empowered to issue process until shown that an attempt has been made to obtain a settlement at a conciliation hearing, and has failed.

There is, of course, every reason to expect a careful selection of conciliators, for they will personally represent the District Court judges in the performance of a most important function. Probably some lawyers will consent to do this work, or some retired judges or justices. The fees are so low that the hungry politician type will not be importunate. At any rate the entire matter of selection and tenure of office rests in the hands of the responsible judges.

The same great success that has attended the Conciliation branch courts of Cleveland and Minneapolis is to be expected now throughout an entire state. Since a larger amount of jurisdiction is involved it is not to be expected that conciliation will be successful to a full one hundred per cent, as in Cleveland, but there will be sufficient interest to avoid the costs of litigation in causes involving less than $200 to afford a sufficient leverage. At the same time there will be no compulsion. If a private conference, guided by a disinterested representative of the court, does not lead to reconciliation, the parties may litigate to their hearts' content. They will be deprived of no right.

The bill which has just been adopted follows very closely the one published in the JOURNAL. Vol. II, No. 5, and in Bul. XV, A. J. S. It departs in providing small fees for conciliators and in limiting the procedure to causes involving not more than $200. In excluding special causes the act also names "actions known as provisional or remedial" and "actions involving title to or possession of real estate." The words "provisional" and "remedial" are construed by Attorney General William Lemke to include actions for "receivership, injunction, mandamus, attachment and garnishment." This prevents the new procedure from embarrassing a plaintiff entitled to summary process to protect his rights.

As orginally drafted (the changes were made in the House) the procedure would have included divorce. It is urged that in Norway one of the very beneficial effects of concilation is in the field of marital troubles. The act as adopted does not expressly negative this theory, though it gives the impression of applying only to money claims. It may be that a decision will be required to clear up this point.

The bill was introduced in the Senate by Senators Olson, Garberg and Oksendahl. Among its active supporters in two sessions of the legislature may be mentioned Mr. C. J. Sundahl, of Niagara; Mr. S. A. Olsness, State Insurance Commissioner, and Congressman Olger B. Burtness. Credit is also given to Mr. Thor J. Benson, 3228 Forest Ave., Chicago, who as editor of Equality has given

strong support to the movement in his magazine and in public addresses in North Dakota. It will be noticed that all the members of this group are of Scandinavian descent, which means that their adherence to the principle of conciliation derives from their knowledge of its successful use in Norway and Denmark. There is a large body of North Dakota citizenship of similar origin which will welcome the innovation and hope to see it succeed.

The text of the act follows. Persons interested in the subject should secure the American Judicature Society Bulletin XV, which gives the complete history of the subject in Europe and in this country.

An Act to Provide for Conciliation of Controversies and to Repeal Sections 9187, 9188, 9189, 9190, 9191 and 9192 of the Compiled Laws of North Dakota, 1913.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

1. CONCILIATION BOARDS CREATED. It shall be the duty of District Court Judges to establish a Conciliation Board in each county of their respective districts within ninety days from the taking effect of this act. Each such Conciliation Board shall consist of such number of Conciliators as the District Court Judge of such county shall determine, and he shall have power to increase the number thereof and to remove Conciliators at his pleasure, but at no time shall there be less than six members nor more than twelve members on any such board. These members shall not include the County Court Judge, who shall be an ex-officio member of the Conciliation Board for his county.

2. ELIGIBILITY AND COMPENSATION. Every person having the qualifications of a voter shall be eligible for appointment as Conciliator for the county in which he resides. Any member of the bar who acts as Conciliator shall not thereafter appear, in any subsequent proceeding, on behalf of either party to any controversy submitted to him as Conciliator. The moving party to any controversy shall pay to the Conciliator a summons fee of twenty-five cents in all cases involving a sum of ten dollars or less, and fifty cents in cases involving a sum of over ten dollars. In every case where conciliation is effected the acting Conciliator shall be entitled to receive for his services the sum of one dollar where the amount of controversy is ten dollars or less, and two dollars where the amount is over ten dollars and less than one hundred dollars, and two per centum of the amount involved where the amount is over one hundred dollars; said amounts to be assessed against either party, or part against each, at the discretion of the Conciliator. Provided; that when two or more Conciliators participate in a hearing a like fee shall be paid to each of them.

3. APPOINTMENT AND OATH. Conciliators shall be appointed and removed by order of the District Court judges for the counties in which they reside, entered upon the docket of the district for each county. Within ten days from the date of their appointment, and before entering upon the discharge of their duties, they shall take an oath of office prescribed by the judge appointing them.

4. ORGANIZATION. The District Court judge shall be chairman ex-officio of the Conciliation Board in each county of his district. He shall call such meetings of Conciliators as he shall deem proper, preside over such meetings and instruct Conciliators in respect to their duties. Upon his request any such Conciliator shall make report to him in writing of his official acts.

5. CONCILIATION PROCEEDINGS PREREQUISITE TO PROCESS. After the expiration of said ninety days no process shall be issued in commencement of a civil suit by any justice of the peace or by any other trial court unless the moving party shall file in court a certificate of a Conciliator showing that an

attempt has been made to effect a settlement of the claim and that such attempt has failed; but the foregoing shall not apply to actions known as provisional or remedial remedies, actions involving title to or possession of real estate and suits involving over $200. Provided, however, that any District Court Judge in chambers may in a particular instance, on a proper showing, direct the issuance of any such process in any trial court without recourse to conciliation proceedings.

6. APPLICATION FOR CONCILIATION. Any person presuming to have any civil claim not specified as an exception in Section 5, before commencing suit, shall request one of the Conciliators for the county in which he resides, or in which the person complaining [complained of] resides, to act as Conciliator. Thereupon such Conciliator, if qualified and able to act, shall summon by letter or telephone or personally the party complained of to appear before him at a certain time. Upon the hour set for such conciliation hearing, if the parties are present, it shall be the duty of the Conciliator to hear the parties and their witnesses and to endeavor to effect an amicable settlement of the controversy agreeable to law and equity. Conciliators may, in their discretion, administer oaths and require statements under oath. They shall make no record of the evidence adduced, and no parts of the proceedings shall be admitted as evidence, or considered at the trial of the case, and no Conciliator shall be competent as a witness in respect thereto in any subsequent proceeding.

7. CHANGE OF VENUE. At the time of the first hearing and before proof has been submitted by any party, the parties may by mutual agreement elect to submit their controversy to another Conciliator than the one first selected; and in such case the first Conciliator shall dismiss the proceedings and make no record of [or] report thereof.

8. CONTINUANCES. Conciliators shall have power to continue their hearings from time to time to meet the convenience of the parties.

9. CONCILIATORS MAY SIT TOGETHER. Conciliators shall have power to request the assistance of other Conciliators of their county in any conciliation proceedings, and in case two or more Conciliators officiate in respect to any controversy any one of them may certify the proceedings on behalf of all.

10. CONCILIATORS NOT OBLIGED TO SERVE. No Conciliator is obliged to act in any given controversy, and shall not act if he has any interest in the controversy or is a member of the immediate family of either of the parties, unless consent is given. In case no Conciliator convenient to the moving party is obtainable, then the County Judge of that county shall act as Conciliator.

11. CONCILIATOR'S REPORT. In every case in which a Conciliator shall serve he shall forthwith certify to the District Court for his county the terms of the agreement, if any be effected. The report shall describe the claimant's demand and embody the terms of settlement, bearing the signatures of the parties. It shall be entered upon the docket of the District Court and thenceforth shall have the full force and effect of a judgment of the said court, but shall be subject to any terms concerning its satisfaction which the parties shall have agreed upon, and subject to the lawful orders of the judge for such District Court.

12. FAILURE TO AGREE. In case the party complained of shall fail to appear at the conciliation hearing or for any other reason there shall be no settlement of the controversy by agreement of the parties, then the Conciliator shall give to either or both parties, upon request, his certificate to the effect that an attempt has been made in good faith by the moving party to effect a settlement of a controversy, which shall be concisely described, and that the attempt has failed.

13. PERSONAL APPEARANCE. The parties to all conciliation proceedings

shall appear in person, except that, for good cause shown, the Conciliator may permit a party to be represented by another person, not a member of the bar. In order to be so represented the party unable to appear shall authorize his representative to appear and act for him in effecting a settlement of the controversy by agreement, or by arbitration, if the representative shall so elect, and shall be bound by the acts of his representative the same as if he were present in person.

14. ARBITRATION BY CONCILIATOR. Whenever both parties shall agree in writing to submit their controversy to a Conciliator for his determination as arbitrator, the Conciliator shall receive the evidence and within five days make his award, which award shall be filed in the District Court for that county and be entered upon the docket as a judgment by award and shall have the full force and effect of a judgment of such Court.

15. REPEAL. Sections 9187, 9188, 9189, 9190, 9191 and 9192 of the Compiled Laws of North Dakota, 1913, are hereby repealed.

Approved March 10, 1921.

Ohio State Bar Association First to Seek Self-Government Powers

The Ohio State Bar Association is the first of the State Associations to carry its ideals for constructive growth to the legislature. The sentiment favoring an all inclusive membership and a practical and responsible organization is strong among the leaders of the Ohio Bar, who express considerable confidence in achieving success for the bill introduced by Senator DeWeese in the last week of March.

The bill is admirably designed to carry out the purposes which now animate the more ambitious lawyers throughout the country. It is intended, as its title says, to "advance the science of jurisprudence, to promote reform in the law, to facilitate and improve the administration of justice, to uphold integrity, honor and courtesy of the members of the legal profession, and to provide for the government of the Bar of Ohio."

While providing means for self-government, subject of course to the plenary power of the courts, the bill looks mainly to constructive features. It provides funds to an extent never before available for carrying on activities designed to make the bar one hundred per cent useful to the state. The bill does not specify precise means but opens the way for any constructive work which may be approved by its membership. It is proposed to lend support to local bar associations and the bill expressly authorizes this. The question of what will become of the local associations is thus effectually answered. It is obvious that there is to be a great necessity for local associations even when the state bar is properly integrated. The question as to whether the state body should be a federation of local bodies has given considerable concern. With full recognition of the importance of the local bars, it still seems inexpedient to impose upon them, by the state bar organization act, any hard and fast limitations.

The Ohio bill deals with this matter in an ideally simple and flexible manner. It merely recognizes the existence of local bars and provides that the State Board of Governors "may allot and pay to any local bar association, city or county, such sum as it may determine sufficient in the premises to carry out any of the purposes of this act." (Section 9.)

Under this provision the existing local associations may continue in various forms, possessing entire local autonomy, but may receive assistance and encourage-

ment under certain circumstances from the state bar.

According to Mr. Daniel W. Iddings, of Dayton, President this year of the Ohio State Bar Association, it is proposed to keep the bar of the state informed on current public questions by securing eminent authorities to lecture to the various local associations. Also, there will be a committee on legislation to which members will be asked to send suggestions at all times, as they occur, concerning changes in the written law, either substantive or procedural. The committee will meet monthly to discuss and digest the proposals, and will then prepare for the Board of Governors a legislative program.

These are but a few of the constructive lines of work which will become immediately available once the entire bar of a state is integrated and organized with responsible leadership. There are many lawyers in every state prepared to perform notable public work if organized avenues for expression are provided. The bar, properly organized, will cease to be a mere brake upon progress, understood to be opposed uniformly to every kind of change, and will take its proper rolé of adviser and formulator of policies. This will be a wholesome change for the lawyer and will benefit the entire state, leading before long to an entirely different conception of the function of the lawyer as a minister of justice.

The disciplinary needs are seen in any large view to be comparatively inconsequential, and yet entirely necessary. In support of the need for self-discipline for the bar, Mr. Iddings quotes from an Illinois questionnaire which showed that only seventeen per cent of a lawyer's earnings comes from the trial of cases. It is fair to assume that no more than seventeen per cent of his activities are subject to the scrutiny of a court. This explains very readily why the courts cannot be expected to succeed in discipline without the aid of an organized bar.

If the Ohio Association is successful in securing passage of its bill it will mark the first day of the renascence of the American bar. Ohio lawyers have been to this time in advance of most other bars. They have held two successful meetings every year and have indicated exceptional vigor. If they succeed in getting this legislation they will have the enviable honor of blazing a way for other state bars, and indications are that in a very few years there will be a number of other states following the example.

The text of the bill follows:

A bill to advance the science of jurisprudence, to promote reform in the law, to facilitate and improve the administration of justice, to uphold integrity, honor and courtesy of the members of the legal profession and to provide for the government of the Bar of Ohio.

Be it enacted by the General Assembly of the State of Ohio:

1. BAR MEMBERSHIP. All attorneys at law now lawfully practicing the profession in this state, and all persons hereafter admitted to the practice of law in this state, are hereby declared to be officers of the supreme court and of the various lower courts of record of the state, and as such are declared to be members of the state bar and subject to the provisions and requirements of this act.

2. BOARD OF GOVERNORS. There is hereby established a board of governors of the state bar consisting of three members resident of each of the districts of the courts of appeals of Ohio, who shall hold office for six years and be selected in the manner hereinafter provided. The board shall be authorized to receive gifts and bequests designed to promote the objects for which it is created and the betterment of the conditions surrounding the practice of the law.

3. ELECTIONS. The board of governors shall be elected by the members of

the state bar, who shall vote by ballot. The ballot shall be deposited in person or by mail with the secretary of the board, or such officer as it may designate. There shall be biennial elections for the purpose of electing successors to the governors whose terms expire. The board shall fix the time for holding elections and prescribe rules and regulations in regard thereto not in conflict with the provisions of this act. The board shall, in accordance with its rules, give at least sixty days' notice of the time for holding each election.

4. FIRST ELECTION. For the purpose of the first election of governors, the clerk of the supreme court, with two assistants to be selected by himself, shall constitute an election and canvassing board: they shall

(a) Set a time for closing the voting not less than sixty days from the time of notice to the members of the state bar;

(b) Notify all such members by mail of the time for voting and the time for closing nominations, which latter time shall be thirty days from the time of mailing notice;

(c) Receive nominations and prepare ballots containing the names of all persons nominated according to the provisions for nomination hereinafter set forth;

(d) Mail such ballots to every member of the state bar at least fifteen days before the time for closing the voting;

(e) Receive and canvass the vote and certify the names of the three candidates receiving the largest number of votes in each of the districts of the courts of appeals of Ohio to the secretary of state as the first board of governors.

5. NOMINATIONS. Nominations for the office of governor shall be by the written petition of any ten or more members of the state bar, resident of any district of the court of appeals of Ohio. Any number of candidates not exceeding three may be nominated on a single petition. For the purpose of the first election the petition shall be sent through the mails to the clerk of the supreme court. Thereafter such nominating petitions shall be mailed to the secretary within a period to be fixed by the rules made by the board of governors. Three governors shall be elected from and by the members of the state bar, resident in each of the districts of the court of appeals of Ohio. The governor elected in each such district receiving at the first election the highest number of votes shall serve for a period of six years, the one receiving the next highest number of votes shall serve for a period of four years, and the one receiving the lowest number of votes shall serve for a period of two years. Thereafter their successors shall be elected and hold office for a period of six years. No state or county officer, except notaries public, shall be eligible to hold the office of governor of the state bar, and every governor shall be a resident of the district from which he may be nominated, elected or appointed.

6. FIRST MEETING. On the fourth Tuesday following the certification of their names the first governors shall meet at the office of the clerk of the supreme court and organize by the election of the following officers of the state bar and its board of governors, namely: a president, a first vice-president, a second vice-president, and a secretary. The secretary need not be a member of the board of governors. It shall be the duty of the clerk of the supreme court to notify each governor elected of the fact of his election and the date of the organization meeting.

7. OBJECT OF ORGANIZATION. The board of governors by vote of a majority of all its members shall employ any and all means to advance the science of jurisprudence, to promote reform in the law, to facilitate and improve the administration of justice, to uphold integrity, honor and courtesy in the legal profession and to provide for the government of the state bar. Said board is further empowered to investigate all

complaints that may be made concerning the unprofessional conduct or want of good moral character of any member of the state bar. All complaints must be in writing, supported by affidavit duly verified. In all cases involving alleged want of good moral character the board shall first determine by a vote of the majority of all its members whether it shall investigate such complaint. In all cases involving unprofessional conduct, in which the evidence in the opinion of the majority of the board justifies such a course, they shall take disciplinary action by public or private reprimand, suspension from the practice of the law, or exclusion or disbarment therefrom, as the case shall in their judgment warrant. In cases involving alleged want of good moral character, they shall have power only to recommend to the supreme court what action shall be taken by that court and to certify to it the record of the proceedings. The term unprofessional conduct, as herein used, shall be construed to include misconduct in office, conviction of crime involving moral turpitude or unprofessional conduct involving moral turpitude. The supreme court may, in any case of discipline, suspension or disbarment from the practice, review the action of the board and may, on its own motion and without certification of any record, inquire into the merits of the case and take any action agreeable to their judgment. Nothing in this act shall be construed to limit or modify in any way the inherent or statutory powers of the supreme court and of the various lower courts of record of the state, in relation to the subject of discipline, suspension or disbarment of members of the bar.

The board of governors shall also have power to make rules and by-laws, not in conflict with any of the terms of this act, concerning the selection and tenure of its officers and committees and their powers and duties and generally for the control and regulation of the business of the board and of the state bar.

The board of governors shall have power temporarily to fill vancancies in its membership. Within ninety days after the occurrence of such vacancy, the board of governors shall order a special election in the district to fill such vacancy. The governor elected to fill such vacancy shall serve only for the unexpired term of his predecessor.

8. LICENSE FEE. No person shall practice law in this state subsequent to the first day of January, 1922, unless he be a member of the state bar and holds a written certificate of such membership issued by the secretary of the state bar under authority of the board of governors. Every member of the state bar shall, on or before the fifteenth day of December, 1921, and each year thereafter, pay into the state treasury a license fee, the amount of which shall be determined by the board of governors but not exceeding ten dollars per annum, and the fund thereby created shall constitute a separate fund to be disbursed by the state treasurer on the order of the board of governors. On or before November 15th of each year the secretary shall mail to every member of the state bar a notice to pay his annual license fee.

9. DISBURSEMENTS. For the purpose of carrying out the objects of this act and the exercise of the powers herein granted, the board shall have power to make orders concerning the disbursement of said fund, but no member of the board shall receive any other compensation than his actual necessary traveling expenses connected with attending the meetings of the board. The board of governors by a vote of two-thirds of all its members, and subject to the approval of the supreme court, may allot and pay to any local bar association, city or county, such sum as it may detemine sufficient in the premises to carry out any of the purposes of this act.

10. DISCIPLINE. The board of governors shall establish rules governing procedure in cases involving alleged misconduct of members of the state bar, and may create committees for the purpose of

investigating complaints and charges, which committees may be empowered to administer discipline in the same manner as the board itself, but no order for the suspension or disbarment of a member shall be binding until approved by the board. The board, or any such committee, may designate any justice of the peace or notary public to take testimony under oath in any such investigation. Any member of the state bar, whether a governor or not, may be appointed a member of such committee. The board of governors shall co-operate with local bar associations, county or city, in all matters relative to the objects and purposes of this act.

11. SUPREME COURT CONTROLS. The supreme court may annul or modify any rule or regulation adopted by the board.

12. PROCEDURE. In the investigation of charges against members of the bar, the board, and any committee appointed by it for that purpose, shall have power to subpoena and examine witnesses under oath and compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such subpoena shall be issued under the hand of the secretary of the board, the chairman of such committee, or the justice of the peace or notary public before whom the testimony is being taken, and shall have the force of a subpoena issued by a court of competent jurisdiction, and any witness or other person who shall refuse or neglect to appear in obedience thereto, or who shall refuse to be sworn or testify or produce books, papers, documents or other writings demanded shall be liable to attachment upon application to the supreme court of the state or to any judge of any court of record for the district or county where the investigation is conducted, as in cases for contempt. All witnesses subpoenaed and appearing at such hearings shall be paid the same fee and mileage as is paid in cases pending in the court of common pleas. These payments shall be by the board of governors. Whenever any lawyer so proceeded against is exonerated, in addition to the payment of all witness fees and mileage, there shall be awarded to him and paid by the board of governors a reasonable fee for his counsel.

13. RIGHTS OF DEFENSE. Any member of the bar complained of shall have notice and opportunity to defend by the introduction of evidence and the examination of witnesses called against him, and the right to be represented by counsel. He shall also have the right to require the secretary, the chairman of the committee, the justice of the peace or notary public, as the case may be, to subpoena witnesses to appear and testify or produce books, papers, documents or other writings necessary or material to his defense in like manner as above provided.

14. RECORDS. A complete record of the proceedings and evidence taken before or by the board, committee, justice of the peace or notary, shall be made and preserved by the board, but it may, where sufficient reason appears and the accused gives his consent, cause the same to be expunged.

15. ANNUAL MEETING. There shall be an annual meeting presided over by the president of the state bar, open to all members of the bar in good standing, and held at such place as the board of governors may designate, for the discussion of the affairs of the bar and the administration of justice. At noon of the last day of such meetings in years in which elections occur, the election shall close and the ballots be canvassed and the result announced. Such additional meetings may be had as the board of governors may determine.

16. UNLAWFUL PRACTICE. If any person shall, without having become duly licensed to practice, as herein provided, or whose annual license fee knowingly shall not have been paid, or whose license to practice shall have expired,

either by disbarment or suspension, failure to pay his annual license fee, or otherwise, practice or assume to act or hold himself out to the public as a person qualified to practice or carry on the calling of a lawyer, he shall be guilty of an offense under this act, and on conviction thereof be fined not to exceed five hundred dollars.

17. CONSTITUTIONALITY. Sections of this act and parts thereof are hereby declared to be independent sections and parts of sections and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not affect any other section, or sections, or part or parts thereof.

18. REPEALER. This act shall supersede all acts, and parts of acts, not herein expressly repealed which are inconsistent herewith.

Florida Lawyers Agree on Bill; Confident Legislature Will Give Approval

The Florida State Bar Association appears to have been unanimous in adopting a draft act for the integration of the bar of the state. The bill was submitted by a committee of which Wiliam E. Kay, Esq., of Jacksonville, was chairman. It was approved March 30 and will be introduced in a session of the legislature to be convened in April. According to reports the bar of Florida is enthusiastically for this measure and confident of success.

The bill presents quite a substantial variation from preceding ones. It provides for appointment of the bar governors by the governor of the state after an advisory vote by all the lawyers of the state. The law of Florida is such that the bill can place the entire matter of bar examinations in the hands of the organized bar, as is done in Section 15. In many states this important function of the bar cannot be presently assumed, owing to well-established law and custom.

Until the Florida Bar Association acted it appeared that Ohio would have the honor of first enacting a bar organization law, but now it looks as though there might be an interesting race. The text of the Florida bill follows:

Section 1. For the purpose of the more efficient administration of justice, the bar of the state of Florida shall be charged with the power and duty, acting through its board of governors, as hereinafter provided, of supervising and regulating the admission to practice, and the conduct of attorneys at law of this state, as hereinafter provided.

Sec. 2. All attorneys at law of this state are hereby declared to be officers of the courts of the state and as such are declared to be members of the state bar and shall be subject to the provisions and requirements of this act.

Sec. 3. The membership of the state bar shall be composed of all attorneys at law of this state, as well as those hereafter duly admitted to the practice of law as provided in this act.

Sec. 4. The board of governors of the state bar as hereby created shall issue certificates of membership in the state bar to those entitled to same upon payment of the license fee hereinafter provided for.

Sec. 5. The state bar shall be governed by a board of governors which shall be composed of nine members, who shall be appointed by the governor of the state from the members in good standing of the state bar, two from each congressional district as now or may be hereafter constituted and one from the state at large. In appointing the board of governors, the governor of the state shall take into consideration the recommendation of a majority of the members of the said bar, although such recommendation shall not be binding upon the governor. For the purpose of determining the choice of the members of the bar for appointment to the board of governors, an advisory nomination election shall be held at such reasonable time before the time provided in this act for the appointment of a board of governors as the board may designate. For the purpose of ascertaining the choice of members for appointment to the board of governors, the board shall send out suitable ballots to each member of the state bar, and the result of such advisory election shall be trans-

mitted by the board to the governor of the state before the time fixed for the appointment of members of the board of governors under the provisions of this act; provided, such advisory election to determine the choice of the membership for appointment on the first board of governors appointed hereunder may be conducted by the voluntary state bar association existing at the time this act takes effect and all practicing attorneys of the state shall be given the privilege of voting in such election.

Sec. 6. The first board of governors appointed under this act shall be appointed for the following terms: Three members shall be appointed for a term of one year; three for a term of two years and three for a term of three years, and after each of such terms shall expire, three members shall be appointed by the governor for terms of three years.

Sec. 7. The board of governors shall elect by ballot from its own membership one who shall be designated as chairman of the state bar and as such shall preside at all meetings of the bar and of the board of governors. The board shall also elect a vice chairman, who shall act in the absence of the chairman. The terms of office of the chairman and vice chairman shall be one year.

Sec. 8. The board shall select a secretary, who shall keep the records and documents of the board and of the state bar, except those pertaining to finances, and shall perform such other duties as may be imposed upon him by the board. The secretary shall not be a member of the board of governors and shall be appointed for a term of two years, unless sooner removed by the governor on the recommendation of the board, and may be allowed a reasonable compensation by the board for his service.

Sec. 9. The board shall also recommend to the governor a suitable person to be appointed treasurer of the state bar, who shall be charged with the duty of keeping the accounts and finances under the direction of the board of governors, and whose appointment shall be for two years, unless sooner removed by the governor on the recommendation of the board. He shall be paid a salary of three hundred dollars ($300) and shall give a bond in the sum of five thousand dollars ($5,000) with some surety company authorized to do business in this state, the fee therefor to be paid out of the funds of the board.

Sec. 10. The board may provide for such committees, with such duties as may be deemed expedient, for the purpose of assisting in administering the provisions of this act, except as to such matters as are herein required to be performed by the members of the board of governors personally.

Sec. 11. The board of governors shall be charged with the executive functions of the state bar and the proper enforcement of the provisions of this act. It shall have a common seal authenticating all its formal acts and orders.

Sec. 12. The board shall act upon all applications for membership in the state bar and order the issuance of certificates of membership; receive complaints against members; make reports and recommendations to the state bar at the annual meetings to the supreme court of the state on matters pertaining to the administration of justice in the state; and shall annually report to the governor and the attorney general the condition of litigated business in each of the judicial circuits of the state, which report shall be embodied in the report of the attorney general to the legislature; and generally shall act for the state bar in all matters pertaining thereto.

Sec. 13. The board shall prepare and furnish such blank forms for application and certificate of membership, forms for complaints, orders, etc., as may be necessary for the proper enforcement of this act.

Sec. 14. With the approval of the supreme court, the board shall have power to formulate rules of professional conduct for all members of the bar.

Sec. 15. The board shall have power to determine the qualifications for admission to practice law in this state and shall examine candidates as to their qualifications and recommend such as fulfill the requirements imposed to the supreme court for admission to practice under this act; provided, however, that until this power is exercised by the board, the requirements for admission to practice under this act shall be the same as those now prescribed by the supreme court for admission to practice law in this state and shall be vested in the supreme court as now provided by law. Provided, that nothing in this act shall be construed to repeal or affect section 2546 of the Revised General Statutes of Florida, 1920, relative to the admission of graduates of certain law schools of the state without examination as to legal attainments, or section 2545 thereof, relating to the admission to practice without examination of attorneys admitted in other states. The examination for legal fitness conducted by the board shall be thorough and comprehensive, and it shall also, before recommending any candidate for admission, fully ascertain his moral fitness to be a member of the bar.

Sec. 16. The board of governors shall hold regular quarterly meetings on the third Monday of June, September, December and March of each year. Five members of the board shall constitute a quorum. Special meetings may be held on written request of three members thereof, stating the necessity and purpose of the call, and the secretary shall notify each member of the board at least five days before the time fixed in the call for such special meeting.

Sec. 17. All necessary expenses of the board of governors, including traveling expenses, expenses incurred in disbarment proceedings and in holding examinations for admission to practice, as well as all other expenses incurred in the discharge of the duties imposed upon them by this act, shall

be paid by the treasurer on proper vouchers therefor. The approval of the board of governors shall be final as to the propriety of any item of expenditure.

Sec. 18. Each member of the association shall on October 1st of each year pay to the state treasurer an annual license fee or tax of twenty-five dollars. Of this amount the treasurer of the state shall retain ten dollars as state license tax, shall pay to the county treasurer of the county of the residence of the member five dollars and shall transmit to the board of governors ten dollars, which shall be used under the direction of the board in the proper administration of this act. No other or further license fee or tax shall be imposed for the privilege of practicing law in the state. Any surplus which shall remain in the hands of the treasurer of the state bar at the end of each fiscal year shall be paid over into the state treasury and be converted into the general revenue fund. No license to practice law shall be issued by the state treasurer until such annual license fee has been paid by the member, accompanied by a certificate of membership of the state bar.

Sec. 19. Certificates of membership shall be issued on or before October 1, 1921, to take effect as of the date this act becomes effective and no person shall be permitted to practice law in this state, or hold himself out to practice, until he shall hold a certificate of membership in the state bar, and, on or before October 1st of each year, shall have paid the license tax hereby fixed.

Sec. 20. The state bar shall hold an annual meeting of its members, beginning the second Monday in March of each year, at such place as may be designated by the board of governors. At such meeting the said bar shall receive reports of the proceedings of the last annual meeting and reports of proceedings had by the board of governors since the last annual meeting; and shall receive and act upon other matters of interest pertaining to the efficiency and development of the administration of justice and to the legal profession generally. The board of governors shall, through its chairman, report and recommend to the state bar in annual session such matters of interest to the profession as it may deem proper and expedient. Special meetings of the state bar may be held at such times as may be called by the chairman and secretary on written request of thirty members, stating the time and purpose of the meeting.

Sec. 21. Upon complaint made for disbarment to the board of governors or any member thereof, or upon investigation made by the board or any member or officer thereof, affecting the conduct of a member of the association, the board shall investigate the same and if a majority of the members of the board are satisfied that the matter complained of is one which should be presented to the court for prosecution, the chairman of the board of governors shall designate three members of the board, who shall in the name of the state of Florida institute disbarment proceedings in the proper circuit court and see that the same are promptly brought to trial, in which said trial the proceedings shall be conducted by one or more of the committee so appointed; but this shall not prevent judges now so authorized by law to order the institution of disbarment proceedings, to exercise such right. The proceedings hereby authorized are to be held and taken as cumulative to any existing provisions of law.

Sec. 22. It shall be unlawful for anyone to practice or assume to act or hold himself out to the public as qualified to act or carry on the calling of an attorney at law, without having first obtained the certificate mentioned in the fourth section of this act. This shall not exclude attorneys from other states from appearing in particular cases when under the rules of comity of such other states attorneys at law of Florida are similarly permitted to appear.

Sec. 23. All acts or parts of acts in any way conflicting with the provisions of this act are hereby expressly repealed and this act shall be deemed a remedial act designed to facilitate the administration of justice in the courts of the state and as such shall be liberally construed to effectuate its intent and purpose.

Idaho Bar Falls in Line

At its annual meeting held January 13-15, the Idaho State Bar Association discussed the subject of bar organization. Approval was given to the plan embodied in the model draft act written by Judge Clarence N. Goodwin, chairman of the A. B. A. committee on this subject, and published in the JOURNAL for December, 1920. A committee was created to see that the measure would be introduced in the Idaho legislature.

The Nebraska Bar Association, which first wrought these ideas into legislative form, could not agree on a bill at its meeting of last December, but the issue is by no means dead in that state. A new committee has been appointed. Success in any other state would practically insure passage of such an act in the Nebraska assembly of 1923.

State Bar Associations which have not yet discussed the subject would do well to invite Judge Goodwin, whose address is Tribune Building, Chicago, and Mills Building, Washington, D. C., to attend and explain the subject.

Self-Governing Bar Organized By Lawyers of San Diego

Many members of the bar are already conscious of the fact that the status of the legal profession in the United States as one of the factors in the administration of justice lacks much of the dignity and importance which it should possess. Individually our lawyers are second to none in learning and ability. Individually they enjoy the confidence of the courts and the respect of the communities in which they live. But the bar as an entity is a mere figure of speech for the aggregate of its individual members. Its organizations contain but a small minority and their functions are largely confined to an annual meeting where a few admirable reports are presented and then forgotten. Except in a few of the largest cities bar associations are usually state-wide, having no efficient local existence and no local influence. As a means of invoking an expression of the views of a number of leading lawyers on some question of general interest, these organizations serve admirably, but beyond that they are almost useless. Their public influence is negligible. Their endorsement or reprobation of a candidate for judicial office is not as important as that of the Tinsmiths' Union. They have no power to enforce any code of ethics which they may adopt for the betterment of the profession. Compared with the powers and the independence enjoyed by the professional organizations of Europe the status of their American brethren is almost ludicrous.

Much of this must be corrected, if at all, by legislation, but much may be done by voluntary organization. A letter of Mr. Dempster McKee, published in *Law Notes* for December, 1920, calling attention to the Lawyers' Institute of San Diego, California, has led to some study of that organization and to the conclusion that it may well be taken as a model for the first step toward a self-governing bar. The Institute is incorporated, and its purposes and policies are fixed by a series of by-laws. Passing without discussion those purely formal by-laws which deal with membership (open to all lawyers of the city on election by the directors), meetings, officers, dues (not to exceed $3 per month) and the like, it is provided that each member "solemnly undertakes to comply with" certain rules of practice. It is further provided as to the effect of membership, the Rules and By-Laws shall be subscribed to by each member. "The effect of such subscription shall be to bind such member to the other members and to the Corporation, with the force and effect of a contract entered into jointly and severally between them, in all particulars provided for in the Rules and By-Laws in force at the time of his admission and all subsequent amendments or additions thereto. As a part of the consideration for his admission, each member voluntarily assumes the burdens, as well as the privileges of such relation, and submits himself to all regulations and discipline in the manner herein provided; and specifically waives all claim for any loss, prejudice or damage which he may suffer by reason of the enforcement of any regulations or discipline. It being the intention to release the said Corporation, its officers and agents from all liability arising from any act herein provided for. All burdens and liabilities and all privileges and all property rights vested by participation in this Corporation are limited to the period of membership therein, and upon termination of membership for any cause whatever the member shall thereby surrender all right or claim to any such privileges or property rights, the same thereby reverting to the Corporation as a part of the consideration for such member's admission to membership in the first instance."

Unique Office Created

Active touch by the Institute with its

members is maintained through a Counsel for the Institution concerning whom the by-laws prescribe: "The Counsel of the Institute shall be appointed and removed at will by the Board of Directors. He shall be a member of the Institute, but may not, at the time, be a Director thereof. The Counsel shall be the chief administrative and advisory agent of the Board of Directors and of the Institute. Among such other duties as may be delegated to him, it shall be incumbent upon him to keep in touch with all members of the Institute; to receive from them reports of affairs touching the Institute; to investigate any reported violation of the Rules and By-Laws and to require conformity therewith on the part of all members; to arrange arbitration in disputed cases when necessary; to conduct actions or prosecutions against members or non-members of the Institute when so required by the Board of Directors; to represent and promote the interests of the Institute before the Courts and the Judges thereof, before any other tribunals and before the public." Further power is given to the Counsel by the following by-law: "Any member will, upon demand, disclose to the authorized Counsel of the Institute the full facts (aside from confidential information) of any matter pertaining to compliance or non-compliance with the foregoing rules. He will also permit such Counsel to examine his books and accounts upon the subject of such matter; any information so received, however, to be held confidential by such Counsel and divulged only in proper case to a Board of Arbiters or to the Board of Directors."

If the Institute proves in practice to be anything more than a friendly and innocuous professional coterie it will be because of the wise and impartial exercise of the powers conferred by the foregoing provisions. Indeed the weak point in the scheme seems to be that the proper administration of the duties imposed on the Counsel calls for a degree of tact and ability which it is too much to expect to be always available. The theory, nevertheless, is an admirable one. A grievance committee, acting only on complaint, inevitably hears only of the most aggravated cases. Discredit necessarily attaches to any member of the profession who is called before such a committee and, therefore, its action is invoked only in cases demanding drastic action. The Counsel of the San Diego Institute on the other hand is empowered to proceed on his own initiative, his investigations may be privately made, and by his activities may hold in check the minor departures from the by-laws which lead to the disintegration of any association to maintain ethical standards.

The standards of professional conduct to which the members of the Institute bind themselves are so admirably expressed as to invite full quotation:

Standards of Conduct

"To exercise toward his client in every instance the highest good faith and to charge for his services only such a fee as is fair and proper; to give to any client no cause for dissatisfaction, but in the event of known dissatisfaction on the part of a client, as to any act or omission of his attorney, to report the circumstances thereof, forthwith, to the duly authorized Counsel of the Institute; to report confidentially to such Counsel any case of dissatisfaction on the part of a client existing against any other practitioner of law."

"To prevent and discourage unnecessary and unfruitful litigation; to refuse employment in cases prosecuted or defended chiefly out of spite or for the purpose of harassing or delaying another. In all litigation where the opposing party is represented by a member of the Institute, to bring the same to final determination at the earliest possible moment; to appear promptly in response to process; to file no groundless demurrer for purpose of delay; to stipulate to the taking of depositions and such other proceedings as might be secured as a matter of course upon motion or notice; to require no justification of surety, etc., except upon good cause; to hasten the course of trial by stipulation of all known provable facts; to attempt the introduction of no improper evidence; to refrain from unsupportable objections and specious arguments; to waive findings of fact when not requisite to the safety of the client; to take or prosecute no appeal except in good faith on actual merit."

"To treat every member of the Institute with consideration in the conduct of mutual business; to require no unnecessary act or effort from opposing counsel; to take no default or penalty against a member, ex-

cept after notice of intention to do so; to make and receive freely and, in good faith, abide by, oral stipulations; to waive notice of rulings and settings for trial whenever present at the occasion thereof; to accompany all general demurrers with a specification of the particulars in which it is claimed the pleading is insufficient; to submit demurrer without arguments unless a favorable ruling is expected in good faith; to make no charge of professional misconduct against another member of the Institute, or against any Judge, to anyone but a member of the Board of Directors, or the authorized Counsel or Board of Arbiters of the Institute. (Provided, that nothing herein contained shall prevent a member from testifying before a Court or other tribunal, nor from making statements in good faith on the occasion of the campaign of such person for election to public office.)"

The foregoing by-laws, it will be observed, go far beyond the rules for the violation of which judicial discipline may be imposed. They deal with matters of controversy between counsel and client though no wrongdoing or dishonesty on the part of the former is charged, and by so doing their administration cannot but be helpful to the standing of the profession by tending to adjust the numerous cases wherein a client feels that he has not been fairly treated, but has no legal remedy. The by-laws quoted also go to considerable length, in enjoining that courtesy and fairness between opposing counsel which have in the past been observed by the better class of the profession and ignored by the others. A strong influence is thus exerted to raise the general standard of professional conduct to that practiced by the best members of the profession.

Arbitration of Grievances

Provision is also made for the arbitration of differences between members or between a member and his client, such arbitration being, of course, voluntary as to the client, but compulsory under penalty of expulsion on the attorney. This provision properly administered will fill a long-felt want. Attorneys are naturally very reluctant to institute proceedings against a fellow practitioner. Unless the grievance of a client is very substantial he finds it difficult to secure an attorney to espouse his cause. As a result there are many instances of clients who feel that in some particular they have been unfairly treated and that it is impossible for them to secure redress, and not only loss of reputation, but loss of business results to the profession as a result of this feeling. It is a matter worthy of consideration whether this provision could not profitably be extended to claims against attorneys held by persons other than clients. The well-known reluctance to bring suit against a fellow practitioner causes the loss of many accounts which would have been collected had the debtor been of any other vocation, and this cannot but engender considerable ill-feeling on the part of the creditor.

A by-law of considerable length prescribes a minimum scale of fees. To this, however, the following proviso is added:

"Provided, however, that nothing herein contained shall be construed as preventing any member from rendering gratuitous services as a matter of professional courtesy to a brother attorney, or to a member of a brother attorney's family, or from accepting from such attorney or such member of his family a fee below the minimum herein; or from making no charge at all, or accepting a smaller fee than the minimum fee, in such cases or matters only where he conscientiously believes that the case or matter in hand is worthy of his charity; or when his professional or other relation to the client is such as would make it embarrassing for him to make the minimum charge, or any charge at all; but such circumstances as justify the waiver of any fee or the receiving of a fee less than the minimum, must be exceptional and in every instance the member must act in reference thereto in the utmost good faith, and in no event shall his fee be less than the minimum, or the fee waived, where the effect thereof would be to underbid another member, or where the same would be a violation of the spirit and intent of the obligation, which every member upon his honor assumes, to abide by the minimum fees hereinafter provided."

The adoption of such a scale and the amount of the fees to be charged if one is adopted are peculiarly local questions to be determined in the light of local conditions. The viewpoint may be an impractical one but, nevertheless, it seems that the adoption of such a scale is unwise unless some local condition imperatively requires it. It is difficult to keep a proper proportion between idealistic and sordid

considerations once the two are mixed, and the maintenance of the standard charges may very readily come to be regarded as the prime purpose of the organization, and its violation the only offense certain of reprobation. A similar condition now prevails in the medical profession, which has an excellent code of ethics, every provision of which may be violated with impunity except that which forbids advertising for business. Moreover it is very easy for the idea to become fixed in the public mind that the association is essentially a trade union, the primary purpose of which is to establish a wage scale, and with that impression prevailing the influence of the association outside its own membership becomes negligible.

See Great Possibilities

An association such as that described is, of course, but a small beginning of limited and local usefulness, but it seems to contain the possibilities of development. Our most important institutions, including the bar itself, grew from beginnings no more pretentious. Given such an Institute in each locality, a state Institute of delegates from each would be truly representative of the profession and could act for it with some degree of effectiveness and authority. At this point legislative extension of the powers of the Institute would be possible. To a profession thus organized could well be delegated the power to discipline its own members, the power to suspend or disbar being conferred on a local committee, subject to review by a committee of the State Institute. In practical effect, there probably would be no difference in the result in a particular case between such a mode of trial and that now obtaining. The difference lies in the moral effect. Whatever may be the result with a mixed population, with a body of intelligent and educated men self-government brings a deep sense of responsibility. The maintenance of professional good conduct would no longer be a matter of official concern as to which the individual practitioner could disclaim responsibility, but would rest squarely on every individual, and it is not too much to hope that the profession would rise to meet that responsibility. The relation between bench and bar would be changed from one of authority and subservience to one of partnership, and again the bar would not fail to respond adequately to the demands of its new status, until the American lawyer might claim a position of equal dignity with that of a member of the bar of Belgium whose status was stated by the Batonnier of the Order of Advocates as follows: "The bar is not an administrative body. It is an autonomous and a free organization. Placed by law at the side of the magistracy to accomplish with it the joint task of justice, it knows neither the guardianship nor the control of any political power. It receives orders or injunctions from no one. It exercises this liberty without restraint, not in the interest of its members, but in the interest of its mission. It has developed in its heart more discipline than pride, it has created a code of severe rules of honor which only the chosen can endure."

Moreover, such an organization of the bar would permit of a much needed reform in the rules of procedure. At the present time the administrative side of the law is in a most unsatisfactory condition, due to the fact that procedure rests either on outworn tradition or on inflexible statutes. Time and money are wasted by courts struggling with an inelastic system; justice is often lost sight of because an elaborate code of rules must be observed if reversal is to be avoided. A simple, elastic and yet adequate set of rules of procedure cannot be formulated except by the legal profession, and not by it until it is mobilized in some form to act as a profession and not as a large number of individuals. To a commission of the bench and the representatives of an organized bar the making of rules of practice, to be revised annually, could be committed with the certainty that most of the confusion of our present system would be obviated.

The realization of these possibilities is

merely a matter of organization. "The lawyer has been scolded and exhorted so long that he would feel neglected if his critics should cease. But nobody has ever suggested the practical steps to be taken to enable him to work out his salvation. The time has come to stop moralizing and consider a definite plan for integrating the bar so it can realize its highest ideals." *Journal of American Society of Judicature,* Dec., 1918. There are several local bar associations which are doing good work, the New York County Lawyers' Association for example, but the San Diego Institute seems to possess some distinctive features which justify bringing it specifically to the attention of those in similar communities who are interested in the first step in the task of integrating the bar.

—W. A. S. in Law Notes, Vol. XXIV, No. 10.

Commercial Arbitration Financed for Two Years By Chicago Association of Commerce

The Chicago Association of Commerce is now raising a fund of $30,000 to be expended in furthering the movement for commercial arbitration, or trade courts. The Association, which is the strongest of its kind in the Central West, has been giving support to the movement for the past three years. The recent decision of the Illinois Supreme Court, sustaining the constitutionality of the revised arbitration law (White Eagle Laundry Co. vs. Joseph Slawek, 295 Ill. ——) has eliminated all doubt as to the attitude of the courts toward this modern form of adjudication.

In this case the Supreme Court holds that an agreement to submit an existing controversy to arbitration is irrevocable; in dicta it holds that an agreement to submit future controversies pertaining to "special questions," presumably as to quantity and quality, are valid and enforceable.

This decision means a great deal to the second greatest commercial center of the Western World. Leaders of the Association of Commerce decided to strike at once, even though there was no present budget to defray an active campaign.

The work involves first the employment of Mr. J. Kent Greene, as director of a Bureau of Arbitration, for a period of two years. Mr. Greene, a member of the Chicago bar, and formerly assistant to the Chief Justice of the Municipal Court, has served as sole arbitrator in nearly two hundred cases in the past few years. In his new role he will act as arbitrator when the parties select him, but will also devote a great deal of attention to promoting the work generally among Chicago business men by addressing their numerous trade associations. There are fifty-four trade sections in the Association of Commerce and they will set up arbitration committees and arbitrators in all these lines of business.

It is believed that an intensive campaign for a few years will immensely encourage arbitration. This will tend to relieve the courts. It will afford lawyers a swifter means for litigating and on the whole a more expert one. At the present time one of the most productive fields of litigation is that of automobile accidents. These are litigated very largely by the lawyers employed by insurance companies. It is likely that they will be diverted to the trade or arbitration courts as soon as facilities exist.

The following extract from the magazine, Chicago Commerce, explains the decision above referred to:

Backed up by the recent decision of the Supreme court of Illinois, which upheld the constitutionality of the arbitration and awards acts, the Commercial Arbitration

Committee of the Association is planning a vigorous campaign for improving methods of settling business disputes.

The decision is a signal victory for the association. It was taken up at a meeting of the Commercial Arbitration Committee Feb. 18, and the chairman, W. E. Shoemaker, appointed a special committee made up of William Eastman, Andrew Lanquist and Herbert Harley, to map out a plan of operations. Efforts are to be made to secure the general cooperation of the attorneys of Chicago in the movement.

The importance of the Supreme court decision lies largely in the fact that it is not necessary for the submission to arbitration to be signed by the parties themselves, but that their attorneys may sign such a submission, even though their authority may be merely by word of mouth. The parties to the controversy may be in different parts of the world and their attorneys may submit a controversy to arbitration without waiting for authorization in writing. This point is extremely important in commercial cases.

The Supreme court holds the act to be constitutional. The parties, therefore, need have no further fear to submit their property rights to this up-to-date method of settling disputes.

Holds Submission Irrevocable

A submission to arbitration is irrevocable. If the parties involved in a dispute choose this method of settling their differences, it will no longer lie in the power of either party to delay proceedings and cause additional expense by withdrawing from the submission.

The last paragraph of the court's opinion recognizes the fact that the parties may agree to submit future disputes which may arise under their contract to arbitration where the matter to be arbitrated applies to special questions such as fixing the amount of loss or damage under such contract, or appraising of amounts, values or quantities. It is pointed out that if the business men will avail themselves of this principle in their executory contracts, a vast amount of litigation can be avoided where the matters to be arbitrated, which arise in the future, have to do with matters of appraising, fixing of amounts, quantities or values.

The case in which this momentous decision was rendered was small in itself and probably would have been dropped if the Association had not stepped in and helped carry it to the supreme tribunal in order that a final decision might be rendered on points of great moment to business men in general.

A brief history of the case follows: The White Eagle Laundry Company brought suit in the Municipal court against Joseph Slawek to recover damages for injuries to an automobile. The defendant also claimed injuries to his automobile.

The plaintiff, through his attorney, Lee E. Daniels, and the defendant, represented by Attorney J. H. Hinshaw, submitted the cause to J. Kent Greene as an arbitrator. Mr. Greene is a member of the Arbitration committee and the Ways and Means council of the Association of Commerce and has arbitrated many causes.

After al lthe evidence had been heard the plaintiff asked the arbitrator for leave to dismiss his cause, as is often done before a court when the plaintiff fears that a decision is likely to be rendered against him. This was objected to by the defendant because of the extra expense and time that would be wasted on another trial. The arbitrator refused to dismiss the case and rendered an award wherein he found that both parties were guilty of contributory negligence and that the plaintiff had no right to recover. This award was approved by Chief Justice Harry Olson of the Municipal court, and the plaintiff appealed the cause to the supreme court in order that the decision of the highest court in the state might be obtained on the question.

It was contended that the plaintiff had a right to withdraw from the submission to arbitration because the agreement to submission was not signed by the parties in accordance with the statute which provides that all persons having legal capacity may, by a writing to be signed by them, submit a controversy to arbitration. It was claimed that this requires the agreement to be signed by the parties themselves and not by anyone acting for them, and that it is not shown that the attorneys had any authority to sign the agreement. It appears from the records that the attorneys, in the presence of the parties to the dispute, plaintiff and defendant, and at their request, signed the submission to arbitration that later was filed.

What the Court Ruled

The Supreme court held as follows:

"Whatever a party may do in his own proper person he may, in general, do by an agent lawfully appointed, and an agent may be appointed by parol to do anything which does not require the execution of a deed for his principal. He may be authorized by parol to make and sign contracts in writing—even contracts which are not binding upon his principal unless in writing signed by him.

"The appellant contends that it had a right to revoke the submission to arbitration and take a non-suit at any time before the arbitrator had indicated his finding in the controversy. At common law the rule was well established that either party might revoke the submission at any time before the award was made, thus rendering the submission wholly ineffectual and taking from the arbitrator all power to make a binding award. (2 Parsons on Contracts, 710; Paulsen v. Manske, 126 Ill., 72; People v. Nash, 111 N. Y., 310.) Section 3 of the Arbitration act provides that a submission to arbitration shall, unless a contrary inten-

tion is expressed therein, be irrevocable. The legislature has the right to enact such a provision unless it is prohibited by the constitution from doing so.

"The appellant contends that the provision is unconstitutional because it deprives parties of property without due process of law and confers judicial powers on individuals not recognized by the constitution. It is true that arbitration is in the nature of a judicial inquiry, but the statute confers no judicial powers on arbitrators. It is not compulsory but is entirely voluntary. If parties choose to submit their controversies to arbitration they have the right to do so. The object of arbitration is to avoid the formalities, delay and expense attending litigation in court, and it has been recognized from a very early period by the common law as a method of settling disputes.

What the Statute Does

"At common law an agreement could be entered into by parol to arbitrate any cause of action which did not involve the title to land, and an award was a full and final adjustment of the controversy, having all the force of an adjudication and effectually concluding the parties from again litigating the same subject. (Smith v. Douglass, 16 Ill., 34.) The statute, in making the agreement irrevocable, confers no new power and takes away no inalienable right. It simply recognizes the agreement of the parties and enforces it. Before the statute was enacted the court would not specifically enforce the agreement to arbitrate but left the parties to their remedies at law for a breach of the contract.

"The effect of making the agreement irrevocable was merely to provide for the specific enforcement of the contract and it violated no constitutional rights. It conferred no power on individuals but provides for the method of carrying into effect the contract of the parties.

"It is also objected that the act is unconstitutional and void as being an attempt to oust the courts appointed by the constitution of their jurisdiction. There is no constitutional provision against the settlement of controversies out of court or the submission of them to the judgment of arbitrators who may be agreed upon by the parties, and no constitutional provision is referred to under this head of the appellant's argument. It has been held that an agreement in an executory contract to submit any controversy which may arise under it to arbitration is an effort to divest the courts of their jurisdiction and is invalid because contrary to public policy. (Stephenson v. Piscataqua Fire and Marine Ins. Co., 54 Me., 55; Hurst v. Litchfield, 39 N. Y., 377; Fox v. Masons' Fraternal Accident Ass'n., 96 Wis., 390.)

"The principle applies only where there is a general agreement to submit all controversies to arbitration. It does not apply to cases where a controversy has arisen and an agreement is made to submit the particular controversy to arbitration or to agreements to arbitrate special questions, such as the amount of the loss under an insurance policy as a condition precedent to maintaining an action. (Niagara Fire Ins. Co. v. Bishop, 154 Ill., 9; Hamilton v. Liverpool, London & Globe Ins. Co., 136 U. S., 242; Scott v. Avery, 5 H. L. Cas., 811.) The statute does not require any causes to be submitted to arbitration, and nobody is any more bound now to submit causes to arbitration than before. It merely recognizes the right, already existing, of parties to submit their causes to arbitration and regulates the method in which the arbitration may be conducted."

The New York Practice Act

The new Civil Practice Act of the State of New York, which will go into effect on the 15th day of April, 1921 (unless the effective date be changed), eliminates technicalities, expedites the trial of causes and simplifies the administration of justice. Among the benefits are provisions that at any stage of an action, special proceeding or appeal a mistake, omission, irregularity or defect may be corrected or supplied. That an error in a ruling of a Trial Court must be disregarded if substantial right shall not thereby be affected. That no action shall fail, or be dismissed on the ground of mistake in the court in which it is brought. It abolishes the perplexing distinction between the orders of the court and those of judges. It provides that no action shall be affected by the nonjoinder or misjoinder of parties. That new parties may be added or substituted, and parties misjoined may be dropped at any stage of the cause. That all persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions, is alleged to exist whether jointly, severally or in the alternative, and that all persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, and judgment may be given against such one or more of the defendants as may be found to be liable according to their respective liabilities. The taking of the evidence of parties and witnesses before trial is greatly

broadened and simplified, thereby largely eliminating artifices and surprise. Judgment may be rendered by the court in favor of any party or parties, and against any party or parties at any stage of an action or appeal if warranted. The elaborate machinery relating to writs of mandamus, prohibition and certiorari are abolished, and provisions are made for obtaining relief heretofore afforded under such writs by a simple order.

In addition it provides that the Act and the rules relating to it are remedial for the guidance of the court, their attorneys, counsellors and officers; that it is liberally to be construed; that the failure to comply with its provisions shall not prejudice a right or prevent relief; that if it affirmatively appear that a strict compliance is necessary to prevent injustice, the court forthwith must direct the defect to be supplied, and if necessary, suspend or adjourn the action or proceeding to enable that to be done, but in no case to dismiss it.

Any layman, whether he has been a party to an action at law or not, readily can see that these provisions are beneficent in the interest of litigants, and of every citizen who may find it necessary to protect rights or redress wrongs. This simplification has the hearty endorsement of the leaders of the Bar of the State, among others Elihu Root, Charles Evans Hughes, William D. Guthrie, John B. Stanchfield, George W. Wickersham, Henry W. Taft, Alton B. Parker, Morgan J. O'Brien, Governor Nathan L. Miller, Louis L. Waters, Adelbert Moot, Simon Fleischmann, and other representative members of the profession.

—*Judge A. T. Clearwater.*[1]

1. The author was formerly a Justice of the Supreme Court of the State of New York; was lately President of the New York State Bar Association; and was the chairman of that Association's committee having charge of the framing of the Practice Act, its amendment and its enactment into law.

Massachusetts Judges Adopt Rules for Small Claims Cases

Massachusetts was the first state to provide simple and inexpensive procedure for small civil causes in the regular system of courts. The limit of jurisdiction is low, only $35, but the new procedure evidences a sensible attitude toward the subject. The legislature in 1920 enacted a measure directing the justices of the District Courts of the state to adopt rules which would permit of informal procedures in these little cases.

The act was printed in the JOURNAL for August, 1920. Subsequently the justices acted under the power conferred and the result is a schedule of carefully framed rules with notes, which will doubtless prove of interest in many other states. The following justices, acting as a rules committee, framed the rules: Henry T. Lummus of Lynn, Frank A. Milliken of New Bedford, Charles L. Hibbard of Pittsfield, Frederick P. Cabot of Boston, and Chief Justice Wilfred Bolster of the Municipal Court of Boston.

This progress appears to be directly attributable to the interest in the subject aroused by the report of Reginald Reber Smith, of the Boston bar, to the Carnegie Foundation on the subject of Justice and the Poor. (JOURNAL, Vol. III, No. 4, p. 112.)

In publishing the rules it appears advisable to reprint the act with the section numbering of the statute book.

Small Claims Procedure Act

SECTION 21. The justices or a majority of them of all the district courts, except the municipal court of the City of Boston, shall make uniform rules applicable to said courts, and the justices of the municipal court of the City of Boston

shall make rules applicable to that court, providing for a simple, informal and inexpensive procedure, hereinafter called the procedure, for the determination, according to the rules of substantive law, of claims in the nature of contract or tort, other than slander and libel, in which the plaintiff does not claim as debt or damages more than thirty-five dollars, and for a review of judgments upon such claims when justice so requires. The procedure shall not be exclusive, but shall be alternative to the formal procedure for causes begun by writ.

SECTION 22. The procedure shall include the beginning of actions with an entry fee of one dollar, but without writ, and without requirement, except by special order of court, of other pleading than a statement to the clerk or an assistant clerk, who shall reduce the same to concise written form in a docket kept for the purpose. The procedure shall include notice by registered mail instead of the mode of service heretofore required, and shall include provisions for early hearing. The procedure may include the modification of any or all rules of pleading and practice, anything contained in other chapters, sections or acts notwithstanding, and may include a stay of the entry of judgment or of the issue of execution. The rules for the procedure may provide for the elimination of any or all fees and costs, and that costs shall be in the discretion of the court. In causes begun under the procedure, the court may on application for cause shown issue writs of attachment of property or person as in causes begun by writ.

SECTION 23. A plaintiff beginning a cause under the procedure shall be deemed to have waived a trial by jury and any right of appeal to the superior court and any right to a report to an appellate division; but if said cause shall be removed to the superior court as hereinafter provided, the plaintiff shall have the same right to claim a trial by jury as if the cause had been begun in the superior court. No other party to a cause under the procedure shall be entitled to an appeal or report. In lieu thereof, any such party may, prior to the day upon which he is notified to appear, file in the court where the cause is pending a claim of trial by jury, and his affidavit that there are questions of fact in the cause requiring trial, with specifications thereof, and that such trial is intended in good faith, together with the sum of three dollars for the entry of the cause in the superior court; and thereupon the clerk shall forthwith transmit such original papers or attested copies thereof as the rules for the procedure may provide, and the superior court may try the cause as transmitted or may require pleadings as in a cause begun by writ, but the cause may be marked for trial on the list of causes advanced for speedy trial by jury. Section one hundred and five of chapter two hundred and thirty-one shall apply in all district courts in causes begun under the procedure.

SECTION 24. The court may, in its discretion, transfer a cause begun under the procedure to the regular civil docket for formal hearing and determination as though it had been begun by writ, and may impose terms upon such transfer.

SECTION 25. In any cause begun by writ which might have been begun under the procedure, the rules for the procedure may provide, or the court may by special order direct, that the costs to be recovered by the plaintiff, if he prevails, shall be eliminated in whole or in part.

Rules for Small Claims Procedure

RULE 1. The plaintiff, or his attorney, shall state the nature and amount of his claim to the clerk who, after due inquiry, shall cause the claim to be reduced to writing in the docket, in concise, untechnical form, and to be signed by the plaintiff or attorney. The signature shall be deemed the beginning of the action. If the claim involves more than three items, the plaintiff or attorney shall deliver to the clerk a fair list of such items, numbered consecutively. If the clerk deems the statement of claim insufficient to make a prima facie case, the court, at the request of the plaintiff or attorney, shall

decide whether such claim shall be received.

NOTE TO RULE 1.

(a) For the meaning of "attorney" and "docket," see Rule 12.

(b) In using the printed docket cards prepared by the Committee on Law and Procedure, the main card for the record of the case should be numbered in the upper right corner. Where there are two defendants, a second printed docket card bearing the same number with "A" added, should be used to record the name and addresses of, and the notice to, the second defendant. A third defendant may be treated in a similar way. Two plaintiffs with a common place of business may be recorded on the main docket card; a second card "A" may be used for other plaintiffs.

(c) The amount claimed should be stated in unliquidated claims as well as others, for jurisdictional purposes, although the court must assess damages even after default.

(d) The list of items delivered to the clerk has several uses. Whether incorporated into the claim, and therefore into the docket and record, by reference, or not, it serves to show to the defendant, upon inquiry of the clerk, the details of the claim against him; and it assists the court, at the hearing, in arriving at the facts. It may furnish the means of amending the claim, if amendment should be needed.

Where the list of items is short, the clerk may reproduce it in substance in the claim written on the docket card, thus avoiding the permament preservation of a separate list; to file nothing permanently except the docket card is an ideal to be attained when practicable. Longer lists of items, when it is deemed necessary to have them become part of the claim, may be incorporated therein by reference, under Rule 12, as, e. g. "See list of items filed."

(e) The claim should be reduced to writing in the docket in a form sufficient to apprise the defendant of its nature, to furnish the basis of an intelligent judgment, to preclude any further suit upon that claim, and, when practicable, to show whether the claim is within the class of claims for labor or necessaries upon which equitable process may be based. More than that is unnecessary.

The following are suggestions for stating claims:

"Claim. Defendant owes plaintiff $27.83 for groceries and household goods, sold him between October 16, 1920, and December 28, 1920, inclusive." [If the list of items is to be made a part of the claim, add, "See list of items filed."]

"Claim. Defendant owes plaintiff for rent of apartment, 10 Allston St., Boston, for month ending October 31, 1920, $50, less $30 paid, balance due, $20. Interest on same, November 1, 1920, to January 1, 1921, $0.20. Total claim, $20.20."

"Claim. Defendant, on or about December 13, 1920, assaulted and beat plaintiff, damages claimed, $35."

"Claim. Defendant, on or about December 28, 1920, converted plaintiff's clock, value $10, and desk, value $20. Total claim, $30.

RULE 2. The plaintiff or attorney shall also state to the clerk, the plaintiff's and the defendant's place of residence, usual place of business and place of employment, or such thereof as the clerk may deem necessary, including the street and number, if any; and the clerk shall note the same in the docket. The clerk shall give to the person signing the claim a memorandum of the time and place set for the hearing. Summonses for witnesses, if requested, will be issued by the clerk, without fee.

NOTE TO RULE 2.

(a) For the meaning of "attorney," see Rule 12.

(b) The defendant's place of residence or usual place of business and in some cases the plaintiff's place of residence or usual place of business, must be shown, to determine the venue. G. L. c. 223, §2.

(c) Most defendants have no "place of business." Hanley vs. Eastern Steamship Corporation, 221 Mass. 125. Often a notice at the place of employment would be wholly effective. The clerk should use discretion as to the address to which he sends the notice, and if he is in doubt should send notices to more than one address.

(d) The memorandum given to the person signing the claim should state, that if the claim is supported by witnesses, books of account or documents, they should be produced at the hearing; and, also, that in case of an unliquidated claim the amount of damage must be proved by the plaintiff at the hearing whether the defendant defends or not.

RULE 3. The clerk shall mail to the defendant, at one or more of the addresses supplied by the plaintiff, as the clerk may deem necessary or proper, by registered mail, return receipt requested, the expense being prepaid by the plaintiff, a notice signed by the clerk, bearing the seal of the court and bearing teste like a writ which, after setting forth the name of the court, shall read substantially as follows:—

"To (*here insert name of defendant*)

"(*Here insert name of plaintiff*) asks judgment in this court against you for (*here insert the amount claimed in dollars and cents*) upon the following claim (*here*

insert the nature of the claim as it appears on the docket; but no list of items need be included.)

"The court will give a hearing upon this claim at (*here insert the location of the courthouse and the room therein, as may be necessary*) at (*here insert the hour*) o'clock in the (*here insert "forenoon" or "afternoon" as the case may be*) on (*here insert the date, including the day of the week, as may be prescribed by general or special order of the court.*)

"If you deny the claim, in whole or in part, you must, not later than (*here insert the date, including the day of the week, of the second day before the day set for the hearing*), personally or by attorney, state to the clerk, orally or in writing, your full and specific defence to said claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defence is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. Summonses for witnesses, if requested, will be issued by the clerk, without fee.

"If you admit the claim, but desire time to pay, you must, not later than (*here insert the date, including the day of the week, of the second day before the day set for the hearing*), personally or by attorney, state to the clerk, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay."

The clerk shall note in the docket the mailing date and address, the date of delivery shown by the return receipt and the name of the addressee or agent signing the receipt.

Notice shall be valid although refused by the defendant and, therefore, not delivered.

If the notice is returned undelivered, without refusal by the defendant, or if in any other way it appears that notice has not reached the defendant, the clerk shall issue, at the expense of the plaintiff, such other or further notice as the court may order.

NOTE TO RULE 3.

(a) The court should establish hearing days by general order, so that the clerk may set the hearing.

(b) The clerk is expected to use all reasonable means of making the notice effective. In cases of doubt, notice should be sent to more than one address. The docket cards prepared by the Committee on Law and Procedure provide an easy method of recording the address to which each notice is sent, and the result.

If the usual notice by registered mail fails, the court may order service of a notice by registered mail deliverable to addressee only, or by sheriff or constable.

(c) Return receipts are not part of the record. Rule 12. The material facts shown by them are to be noted on the docket card. If the clerk desires to keep the return receipts, they may be numbered to correspond with the cases, and kept in any card tray or elsewhere.

RULE 4. A defendant, unless the court shall otherwise order, shall be defaulted unless he shall, personally or by attorney, not later than the second day before the day set for the hearing, state to the clerk, orally or in writing, his defence to the claim. A court sitting in more than one city or town may prescribe by general order other times for stating defences, and may vary the form of notice to the defendant accordingly. The clerk shall enter the substance of the defence in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and the grounds of such contest. Demurrers, dilatory pleas and the answer of general denial are prohibited. No case shall be deemed ripe for judgment before the time set for the hearing.

NOTE TO RULE 4.

(a) While the English county courts usually require no answer, it is felt to be unjust to require plaintiffs to attend hearings prepared to try claims that will often prove to be undefended. The defence may be stated orally to the clerk, or mailed in season to reach the clerk on the specified day, by the defendant or attorney, so the requirement will not be burdensome. For the meaning of "attorney," see Rule 12.

(b) Demurrers and other technical incidents or results of imperfect pleading have been intentionally avoided. The creation of technical questions of pleading would be undesirable. Yet it is desirable that

claims and answers should give ample notice of the real claim or defence.

A party who does not make the fair disclosure required by these rules, risks the imposition of discretionary costs under Rule 9; and that liability seems sufficient.

(c) Suggestions of answers are:

"Answer. Defendant paid $17 on claim, and owes the balance."

"Answer. Defendant owes for the coat, but the hat was never delivered to him."

"Answer. That part of claim accruing before January 1, 1915, barred by stat. of lim. The later part contracted by wife without authority."

"Answer. Defendant struck plaintiff in self-defence."

"Answer. Plaintiff agreed to do whole job for $15. Did not do workmanlike job. Did not use proper paint."

"Answer. Defendant owes items 1 and 3. Item 2 was not up to sample, and was not merchantable, and was returned by defendant. Item 4 was never ordered, and was returned by defendant." [This answer is adapted to a case where a list of items is incorporated into the claim.]

RULE 5. The defendant, within the time for answer may, in the manner provided by Rules 1 and 2, claim any set-off or counterclaim within the jurisdiction of the court in civil cases. Upon the making of such claim by the defendant, the clerk shall give a notice to the plaintiff, at the expense of the defendant, similar to that provided by Rule 3, and shall postpone the hearing of the original claim until the time set for hearing the defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered within the time and in the manner provided by Rule 4, and the penalties upon defendants provided by said rule shall apply to plaintiffs in respect to claims by a defendant. The original claim and the claim of set-off or counterclaim, shall be deemed one case.

NOTE TO RULE 5.

(a) If the plaintiff chooses to adopt this procedure, it is submitted that he adopts it subject to its rules for set-off and counterclaim. See Aldrich vs. E. W. Blatchford & Co., 175 Mass. 369. The defendant, seeking to avail himself of this set-off, rather than a set-off of judgment which the courts have inherent power to allow (Franks vs. Edinburg, 185 Mass. 49), can have, it is submitted, no cause to complain if the result happens to be unfavorable.

(b) A set-off or counterclaim may be recorded upon a printed docket card bearing the number of the case with "B" added.

RULE 6. The court may at any time allow any claim or answer to be amended. Interrogatories shall not be filed, nor depositions taken, except by leave of court.

NOTE TO RULE 6.

(a) Amendments may be made without any written motion, and the amendment may be noted on the back of the docket card.

(b) Interrogatories and depositions, if allowed, would delay cases intended to be speedily heard.

RULE 7. Witnesses shall be sworn; but the court shall conduct the hearing in such order and form, and with such methods of proof, as it deems best suited to discover the facts and to determine the justice of the case. If the plaintiff does not appear at any time set for hearing, the court may dismiss the claim for want of prosecution, or enter a finding on the merits for the defendant, or make such other disposition as may be proper.

NOTE TO RULE 7.

(a) See Com. vs. Rosenblatt, 219 Mass. 197.

(b) Under small claims procedure, the judge is an investigator, not merely an umpire. He, rather than counsel or parties, is in active charge of the proceedings. To allow hearings to be delayed or postponed on account of engagements of counsel is contrary to the spirit of the statute, and subversive of the procedure.

(c) Laymen presenting their own cases cannot be expected to comply with all the technical rules of evidence and trials that the desire to prevent prejudice in jury trials has developed. "The greatest and most remarkable offshoot of the jury was that body of excluding rules which chiefly constitute the English 'Law of Evidence.' . . . Sharply and technically used, these rules enable a man to go far in worrying an inexperienced or ill-prepared adversary, and in supporting a worthless case." Thayer, Preliminary Treatise on Evidence, 180, 528. Only the essential principles of justice in procedure are useful to a judicial investigator without a jury.

(d) Where the plaintiff without cause fails to prosecute his claim, it is believed that the court should have power to enter a judgment on the merits, and end the controversy. See Carpenter, etc., vs. N. Y., N. H. & H. R. R. Co., 184 Mass. 98. Kyle vs. Reynolds, 211 Mass 110. This power should not be exercised, however, except to prevent oppression.

RULE 8. No process of mesne attachment shall issue under this procedure, except upon the order of the court. Such order shall state the amount of the attachment and the property or credits to be at-

tached. The form of the process shall be substantially that required for supplementary process in ordinary civil actions.

RULE 9. The actual cash disbursements of the prevailing party for entry fee, mailing fees, witness fees and officers' fees shall be allowed as costs. No other costs shall be allowed either party, except by special order of the court. The court shall have power in its discretion to award costs, in a sum fixed by the court, not exceeding twenty-five dollars (exclusive of such cash disbursements, or in addition thereto) against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim or defence, or has made an unfair, insufficient or misleading answer, or has otherwise sought to hamper a party or the court in securing a speedy determination of the claim upon its merits; and to enter judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require.

NOTE TO RULE 9.

The discretionary power to award costs will tend to make justice speedy and efficient, and to prevent intentional delay and trickery. Where the discretionary costs go against the losing party, they will be included in the judgment. Where they go against the prevailing party, they may be set off, or made the subject of a separate judgment and execution—not a novelty in our law, G. L. c. 261, §§ 3, 22, Wixon vs. Marcus, 174 Mass. 67.

RULE 10. The court may order that the judgment shall be paid to the prevailing party or, if it so order, into court for the use of the prevailing party, at a certain date or by specified instalments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay shall at all times be subject to being modified or vacated.

NOTE TO RULE 10.

After the hearing on the merits, or after default on the merits, the court may, at the time set for the hearing, consider the question of stay of execution. Often the whole defence, in ordinary civil action, is caused by a desire to secure a stay of execution; if such stay is authorized it will tend to secure speedy justice without oppression. The court need not feel bound to consider a stay asked by a defaulted defendant who has not asked for a stay according to the terms of the notice to him. Rule 3.

RULE 11. The court may at any time upon motion, and after such notice, by mail or otherwise, as it may order, for cause shown, vacate any judgment entered under this procedure, for want of actual notice to a party, for error, or for any other cause that the court may deem sufficient, and may stay or supersede execution. The court may also order the repayment of anything collected under such judgment, and may enter judgment and issue execution therefor; but no order shall affect the title of any bona fide holder for value under said judgment. Costs in an amount fixed by the court not exceeding twenty-five dollars may be awarded, in the discretion of the court, for or against either party to a motion to vacate judgment, and judgment may be entered and execution may be issued therefor, and any action by the court may be made conditional upon the payment of such costs or the performance of any other proper condition.

NOTE TO RULE 11.

The vacation of judgment "on motion," i. e., by application in the same case, is much more simple than existing methods. No writing is required; only an entry in the docket. Rule 12. Proceedings upon such a motion may be recorded upon an unprinted docket card, bearing the number of the case with "C" added.

This rule covers the cases within the scope of motions and petitions to vacate judgment, and writs and bills of review. See G. L. c. 250. While broad and simple, the provision for discretionary costs will prevent its abuse.

This rule does not prevent the court from correcting its record, of its own motion, under its inherent power, to conform to the truth. Karrick vs. Wetmore, 210 Mass. 578. Hathaway vs. Congregation Ohab Shalom, 216 Mass. 539. Waucantuck Mills vs. Magee Carpet Co., 225 Mass. 31. Wetmore vs. Karrick, 205 U. S. 141.

RULE 12. The docket shall consist of cards, envelopes or folders, and such other documents as may be incorporated therein by reference. Nothing shall be deemed part of the record except the docket entries. Any written papers delivered to the clerk shall be merely authority for the clerk to enter the substance thereof on the

docket, and such papers need not be filed or preserved. The word "clerk" in these rules shall include an assistant clerk. The word "attorney" in these rules shall mean an attorney at law, a person specially authorized in writing to prosecute or defend the claim, one of a number of partners or joint plaintiffs acting for all, or an officer, manager or local manager of a corporation acting for it. Notice to such attorney for a party shall be equivalent to notice to such party.

NOTE TO RULE 12.

(a) The accumulation of a mass of claims, answers, motions, letters and other papers, drawn by the parties, would be a nuisance. Even the return receipt does not become part of the docket or record. A list of items becomes part of the docket and record only when incorporated into the claim by reference, as, e. g., "See list of items filed." To file nothing permanently except a single docket card is an ideal to be attained and practicable.

(b) The use of the 5x8 printed docket cards prepared by the Committee on Law and Procedure and printed by the Library Bureau, 43 Federal Street, Boston, is recommended. These cards are printed from plates owned by the Association of Justices of District Courts. The name of the particular court ordering cards is printed in the margin. Filing envelopes, 5x8, to be numbered like the docket cards, for the temporary or permanent filing of lists of items, etc., are also useful. Filing devices for such cards and envelopes are readily procurable.

(c) In small courts the docket cards themselves, filed with any accompanying envelopes by the names of the defendants, may constitute a sufficient index. In larger courts the docket cards and any accompanying envelopes would better be filed and numbered chronologically, with a card index for plaintiffs and defendants.

RULE 13. The venue shall be the same as in ordinary civil actions. Rules of practice in ordinary civil actions, which are applicable to this procedure and not inconsistent with these rules, shall apply to cases under this procedure.

RULE 14. Upon removal of a cause to the superior court, the original docket entries or, in case of removal by some of several defendants, an attested copy thereof, shall be transmitted to the clerk of the superior court.

RULE 15. In actions of contract or tort, other than slander and libel, hereafter begun by writ, in which the recovery of debt or damages does not exceed thirty-five dollars, no costs other than the taxable cash disbursements shall be recovered by the plaintiff, except by special order of the court for cause shown.

Crime Problem Solved Through Detroit's New Unified Criminal Court

Detroit has reached the end of its worry about crime. It has created a machinery for enforcing law which will speedily raise it far above every other city in the country. From this time there will be steady improvement in conditions, which probably are already better than in any other large city. Detroit has been redeemed by her vigilant police and her model criminal court in such swift and dramatic manner that many of her own citizens are hardly aware yet that there has been a great transformation.

There has been a vast amount of vague and meaningless moralizing about crime in this country. The problem is in some respects simpler than many persons seek to make it. There can be improvement anywhere when police and court efficiency join hands.

Detroit has had intelligent and honest police direction in the past few years. Last April its unified criminal court began business. There was an immediate reaction. No longer was there doubt as to conviction in cases which appeared to merit conviction. New spirit was injected into the police. It was no longer a mere matter of discipline to work hard and risk life in apprehending criminals—there was the prospect of rooting crime out and making a fine record befitting a proud city.

The JOURNAL for August, 1920, pre-

sented figures for the first few months, showing encouraging progress. The court was keeping up with its work through the heroic endeavor of four of its seven judges. The only question was whether these judges could hold up under the terrific strain. The fall election brought another staunch supporter to the little group and the court became stronger than ever.

Until the latter part of the year the police force was short about 250 men. Toward the close of summer the slackness in industry permitted of recruiting to the full number. A citizens' volunteer committee was also organized, and rendered valuable assistance. In the drive on crime every available man was put on night duty, for it was such crimes as burglary and robbery which were giving greatest concern.

Results came speedily. In November and December there was a sensational reduction in crime. This was continued in the first two months of the present year.

The annual report of Police Commissioner James W. Inches, M. D., filed with the city council at the end of the year, told an impressive and encouraging story. Two months later it was supplemented by a report which makes it clear that Detroit deserves the credit we are bestowing. Here are figures which are convincing:

Breaking and Entering Dwellings

	1916	1917	1918	1919	1920	1921
January	199	95	143	131	64	38
February	109	77	155	130	78	42

Breaking and Entering Business Places

	1916	1917	1918	1919	1920	1921
January	110	124	162	114	99	35
February	83	96	173	81	99	46

Robbery

	1916	1917	1918	1919	1920	1921
January	45	85	83	62	112	53
February	30	50	99	53	98	35

Larceny from Person

	1916	1917	1918	1919	1920	1921
January	58	44	51	59	46	37
February	53	77	45	42	39	19

The credit for this great work is given by Commissioner Inches to the increased force of patrolmen, the volunteer force, and the unified criminal court. In reference to the court the Commissioner says, in a letter to the Editor:

"Concerning the new Municipal Court I cannot speak too extravagantly of the results we have gotten from the close cooperation between it and this Department. As you know, the relations between the criminal courts and Police Departments are not always what they should be. A few years ago it was almost impossible for us to get any convictions of pickpockets and in fact our results in all crime were very discouraging. Now we know that the Courts are going to back us up 100 per cent. Judge Keiden, Presiding Judge of the new Municipal Court, has himself sentenced over 100 men to terms ranging from ten years to life for robbery, while armed, in the past ten months, a great majority of them getting from fifteen years to twenty-five years."

The reasonable certainty of conviction which has taken the place of rank inefficiency on the part of the former criminal courts, is due simply to the concentration of responsibility, the opportunity for promptness and the doing away with appeals, needless continuances, worthless bonds and shyster lawyers.

Formerly the efforts of the police were like those of sailors pumping a ship with a hole in her bottom. Now the hole is plugged.

It is, of course, impossible to gauge such a great reformation in terms of dollars, but other cities will have added incentive to follow Detroit's example when they realize that there is a great financial profit in law enforcement, and one not wholly escaping calculation. For instance, when the Rate Committee of the Conference of Insurance Companies recently increased the insurance rates for automobile liability, theft and property damage for New York, Chicago, Cleveland and other cities, a reduction was made for Detroit in recognition of the success of the police campaigns against auto stealing and for traffic law enforcement. The saving to Detroit citizens will amount to $1,500,000 in the current year. In this work the cooperation of an efficient court has been just as essential as vigilant policing. The city's receipts from fines last year reached the total of $808,933.03, part of which came from the U. S. court.

Prepare Fight on Crime

A survey of the administration of criminal justice is being made in Cleveland. Members of the American Judicature Society will be kept informed on the progress of this important work. Similar work has been in progress in Cincinnati during the past year. In no city has any thorough study of this sort been completed.

The Cleveland work is made possible through the donation of an anonymous individual, the Cleveland Foundation serving as trustee. The general supervision of Dean Roscoe Pound and Professor Felix Frankfurter of the Harvard Law School was secured. The field work has been under way for several weeks by Mr. Herbert B. Ehrmann, of the Boston bar, who will be assisted by Mr. Reginald Heber Smith, author of the Report on Justice and the Poor. The investigation will cover the entire subject of policing, penal institutions, criminal courts, prosecution, and criminal procedure.

It begins to look as though "reconstruction" would mean, in some quarters, a real campaign to rid American cities of their chief disgrace, the slack administration of criminal law.

American Judicature Society

To Promote the Efficient Administration of Justice

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